



September 13, 2004

Ms. Tam Doduc
Deputy Secretary for Environmental Quality
California Environmental Protection Agency
P.O. Box 2815
Sacramento, California 95814

Advisory Board*

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California Safe Schools

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* Affiliations Provided for
Identification Purposes Only

Re: Comments on EJ Action Plan (August 2004 Draft)

Dear Ms. Doduc:

Thank you for the opportunity to comment on the August 2004 draft Cal/EPA Environmental Justice Action Plan. The most recent draft includes significant improvements and will form the basis for viable progress in addressing environmental justice problems in California. We agree with the proposal to focus on precautionary approaches, cumulative impacts, the Governor's Environmental Action Plan, and public participation/community capacity building. These are priority issue areas in need of immediate attention and decisive action.

With regard to precautionary approaches, we suggest revising the EJ Action Plan to include an explanation that the consideration of precaution relates to decision-making in the absence of unambiguous evidence about potential harm of a proposed activity. As currently drafted, the EJ Action Plan simply states that Cal/EPA will consider precautionary approaches without explaining the issues involved.

The success of Cal/EPA's efforts to address the issue of precautionary decision-making will hinge upon (1) moving from abstract theoretical discussions to real world applications, (2) educating stakeholders so as to assure a complete and accurate understanding of the Precautionary Principle, (3) deciding what constitutes reasonable suspicion of potential harm, and (4) giving due consideration to the use of alternatives analysis as an integral part of any precautionary approach. To assist in this process, we strongly recommend that all Cal/EPA staff engaged in this pursuit be required to read at least two books – *Protecting Public Health and the Environment*, edited by Carolyn Raffensperger and Joel Tickner, and *Making Better Environmental Decisions* by Mary O'Brien. Cal/EPA should use the ideas, analyses, and recommendations in these two publications as the foundation upon which to construct guidance on precautionary approaches.

We caution Cal/EPA about its proposal to “[i]dentify reasonable *cost-effective* approaches that could be used to prevent or minimize adverse environmental impacts.” (EJ Action Plan §2.1, emphasis added) We request that Cal/EPA strike the term “cost-effective” from the sentence. Consideration of the cost-effectiveness of any policy or activity raises many concerns. Such analyses always focus on direct, easily quantifiable costs incurred by polluters and never adequately consider the long-term in-direct public health, social, and other costs associated with polluting activities. You do not have to be an economics scholar to understand that polluting businesses thrive on the inability of government officials to force companies to internalize the costs of environmental degradation. Polluters maximize profits by externalizing (i.e., making others pay) the ecological and public health costs associated with pollution. While the consideration of costs may play some role in precautionary decision-making, it should only do so with a frank and open acknowledgement of the inherent limitations involved. We recommend that all Cal/EPA staff engaged in cost-benefit analyses be required to read *Pricing the Priceless: Cost-Benefit Analyses of Environmental Protection* by Lisa Heinzerling and Frank Ackerman of Georgetown University.

The Cal/EPA EJ Action Plan should also be improved by clarifying that the consideration of cumulative impacts will not be limited to an approach based solely upon risk assessment. Cal/EPA should specify that the term “cumulative impacts” is to be interpreted in a broad and inclusive manner. Cumulative environmental impacts should be viewed as referring to environmental hazards, both potential (e.g., the storage of toxic chemicals) and actual (e.g., the emission of toxic air contaminants), exposures to pollutants, public health risks (e.g., as calculated in risk assessments), and adverse disease outcomes (e.g., cancer). This is particularly important because the Office of Environmental Health Hazard Assessment, which has an institutional bias toward risk assessment, will be leading the effort to develop cumulative impacts guidance. The full continuum of hazards, exposures, risks, and disease outcomes must be considered. Cal/EPA should establish a clear mandate for an inclusionary approach to the assessment and reduction of cumulative impacts.


Per this concern, we request that Cal/EPA revise Section 3.1 of the draft EJ Action Plan: “The projects will focus on environmental *hazards*, exposures, ~~and~~ risk factors, *and disease outcomes* that impact children’s health.” (additions in italics, deletions in strikeout) We also ask that Cal/EPA inform staff that the Children’s Environmental Risk Reduction Plan will be undertaken in a manner that assesses, prevents and reduces environmental hazards, exposures, risks, and diseases, not just “risk” as narrowly defined in standard risk assessments.

With regard to public participation and community capacity building, we encourage Cal/EPA to establish guidelines that include both the minimum requirements for public participation practices and optional measures that could provide for enhanced participation opportunities.

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In conclusion, it would help if Cal/EPA could more specifically identify a meaningful role for the Cal/EPA Advisory Committee for Environmental Justice. We are fast approaching the 1-year anniversary of the last meeting of the Advisory Committee. The draft EJ Action Plan indicates the Advisory Committee would not meet again until January 2005. Cal/EPA would benefit from convening a meeting of the Advisory Committee in advance of January 2005 to discuss the status of the Cal/EPA environmental justice program and to identify more precisely the role of the Advisory Committee in the EJ Action Plan and EJ Strategy processes.

Sincerely,

A handwritten signature in dark ink, reading "Joseph K. Lyou". The signature is fluid and cursive, with the first name "Joseph" being the most prominent part.

Joseph K. Lyou, Ph.D.
Executive Director

VIA ELECTRONIC MAIL